

THE NEW MCP: TRANSITION FACT SHEET #1

OVERVIEW OF TRANSITION REQUIREMENTS

SUBPART F 310 CMR 40.0600

The Massachusetts Department of Environmental Protection (DEP) has redesigned the Waste Site Cleanup Program, and has revised the rules for reporting, assessing, and cleaning up releases of oil and hazardous material. The revised Massachusetts Contingency Plan (310 CMR 40.0000, "MCP"), which contains these rules, and related fee regulations (310 CMR 4.00) were promulgated on July 30, 1993. Most of the MCP's provisions took effect on October 1, 1993. Subpart F, with specific transition requirements for sites and "locations to be investigated" that have already been reported to DEP, became effective on August 2, 1993.

The new MCP provides opportunities and incentives for those who are legally responsible to meet their obligations as efficiently and effectively as possible. This fact sheet provides an overview of the redesigned program and transition process. It is one of a series of fact sheets that describe the specific transition requirements and the options available for each type of site.

THE WASTE SITE CLEANUP PROGRAM REDESIGN: In July 1992, M.G.L. c. 21E was amended to streamline the site assessment and cleanup process. The amendments directed DEP to revise the MCP to:

- o allow cleanups at most sites to be handled by private parties, with response actions coordinated by Licensed Site Professionals ("LSPs"), who are licensed by an independent Board as experts with required technical knowledge and experience in site assessment and cleanup;
- o require that all sites reach a level of no significant risk, and that background levels of contamination be achieved where feasible;
- o reduce the number of DEP approvals private parties need for cleanups at most sites from six to none, or in some cases one permit, cutting processing time and costs for those conducting response actions;
- o provide for DEP audit of 20% of all sites each year to ensure that response actions meet deadlines and assessment and cleanup standards;
- o provide clear thresholds for reporting releases of oil and hazardous materials, and clear endpoints for response actions that establish when responsibilities for cleanup have been met;
- o establish procedures for response actions which allow the level of work to reflect conditions and needs of the specific site, and to provide flexibility in cleanup decisions;
- o establish fees to cover DEP's reviews of permit applications and DEP's costs of auditing response actions to ensure that they comply with the regulations (these fees will replace DEP's current oversight cost recovery charges at most sites).

The new MCP establishes many opportunities for private parties to act quickly when contamination is discovered -- to assess the situation and to take prompt and early action that either completely cleans up the release or at least reduces risks. The revised rules also establish deadlines, and require progressively more assessment and higher fees for sites that are more complex and/or that stay in the system longer. More complex sites and sites where response actions are unnecessarily delayed will get more oversight from DEP, with more reports required and higher fees.

GOALS FOR TRANSITION: The transition requirements for sites and locations that have already been reported to DEP have been designed to ensure that work in progress continues, and to provide opportunities for these sites and locations to reach a level of "No Significant Risk" as quickly as possible:

- o DEP approvals under the 1988 MCP for response actions that have not yet been completed will be honored, so that work can be completed under the terms of the approval;
- o there are options for using the new MCP's tools, such as LSP Opinions and the new cleanup standards;
- o there are new incentives for work to proceed (such as specific deadlines), and requirements for fees to be assessed if deadlines are not met.

HOW CAN SITES THAT HAVE ALREADY BEEN REPORTED TO DEP MAKE THE TRANSITION TO THE NEW PROGRAM? The transition requirements for locations and sites that have been reported to DEP in accordance with the 1988 MCP can be found in Subpart F of the revised MCP (310 CMR 40.0600). There are separate provisions for:

- o locations to be investigated,
- o confirmed disposal sites, including:
 - # priority sites
 - # non-priority sites without waivers of DEP approvals
 - # sites that have not been classified
- o sites classified as non-priority with approved "waivers",
- o "remedial" disposal sites where DEP has determined that a cleanup action has been completed,
- o "deleted" disposal sites where DEP has determined that no further response actions are needed, and
- o releases reported to DEP between August 2, 1993 and September 30, 1993 which do not fall into any of the categories listed above.

In general, the transition provisions specify that response actions that have already been approved by DEP should be completed under the terms of the approval (including work at "waiver" sites). The regulations also require that locations and sites with relatively low levels of contamination be assessed to determine whether there has been a release that must be reported to DEP under the requirements of the new program. If not, DEP must be notified that no further action is required. If so, the Responsible Party, Potentially Responsible Party or other person conducting response actions at a site or location must inform DEP of the course of action that is intended for the site, and commit to performing the required response actions.

The transition regulations provide some options for sites where work remains to be done. In some cases, reports that have already been submitted to DEP can be used to meet the transition requirements. In other cases, conditions at the site will need to be reviewed. There are opportunities for employing an LSP to coordinate response actions, and in some situations, an LSP must be used. Generally, those responsible for sites will need to report to DEP about their site's status and plans for response actions if response actions are still needed past October 1, 1993.

Decisions about what approach to use will depend on what response actions have already been done, how close a site is to completing response actions, and the overall nature and complexity of contamination at the site. As with the rest of the revised MCP, early actions may save time and money later on.

WHAT REQUIREMENTS APPLY TO SPECIFIC SITES? In August 1993, DEP published the 1993 Transition List of Confirmed Disposal Sites and Locations to be Investigated, which included all sites and locations known to DEP as of July 1, 1993. An Addendum to be published in April 1994, will identify new sites reported to DEP between July 1, 1993 and October 1, 1993, sites whose transition status has changed since the publication of the August List (e.g., a Location to Be Investigated has been granted a Waiver of DEP approvals), and sites which have a waiver application pending DEP approval.

The specific requirements and deadlines for assessing a site or location and reporting its status and plans for future response actions to DEP depend on the category in which the site or location is listed in the 1993 Transition List or Addendum. To assist those conducting response actions in planning for a smooth transition to the new program, DEP has sent information to Responsible Parties, Potentially Responsible Parties, and Other Persons conducting response actions about how each site is listed in the List and Addendum, and also about the specific requirements for that type of site.

There are sites which have been reported to DEP but are not included in the 1993 Transition List and Addendum. These sites include spills of oil and hazardous material that may not have been cleaned up permanently, and "locations to be investigated" for which DEP lacked sufficient information to decide whether to list or not. DEP may review these locations on a specific schedule and either will ask that further actions be taken or will refer them to the agency's Site Discovery Program for possible action in the future. The transition provisions of the revised MCP do not apply to sites or locations reported to DEP prior to August 2, 1993 and which are not identified in the August 1993 Transition List or the Addendum (see Transition Fact Sheet #9).

FOR MORE INFORMATION:

The 1993 Transition List of Confirmed Disposal Sites and Locations to be Investigated and Addendum can be obtained from the State Bookstore:

State Bookstore
State House, Room 116
Boston, MA 02133
Telephone: 617/727-2834

Western Office of the Secretary of State
436 Dwight Street
Springfield, MA 01103
Telephone: 413/784-1378

The revised MCP (including Subpart F, the transition provisions) and related fee regulations (310 CMR 4.00) are available at the State Bookstore at the above addresses.

For answers to questions: DEP has set up an **MCP Hotline**, as part of DEP's "InfoLine", which will provide answers to questions about the new MCP, or provide additional information. **From area code 617 and from outside of Massachusetts, call 617/338-2255. From area codes 508 and 413, call 1-800/462-0444.**

Licensed Site Professionals: A list of LSPs is available from the Hazardous Waste Site Cleanup Professionals Board of Registration, c/o DEP, One Winter Street, 6th Floor, Boston, MA 02108 (Telephone: 617/292-5556), or from any of DEP's Regional Service Centers.

Other Transition Fact Sheets: This Fact Sheet is the first in a series about the new transition requirements in the revised MCP. Other fact sheets are also available:

- # Transition Requirements for Locations to be Investigated and Unclassified Confirmed Sites (#2)
- # Transition Requirements for Non-Priority Sites with Approved Waivers of DEP Approvals (#3)
- # Transition Requirements for Non-Priority Sites without Waivers of DEP Approvals (#4)
- # Transition Requirements for Priority Sites (#5)
- # Transition Requirements for Sites with Consent Orders and Consent Decrees (#6)
- # Transition Requirements for Remedial Sites and Deleted Sites (#7)
- # Transition Requirements for Releases Reported to DEP Between August 2, 1993 and September 30, 1993 Which Do Not Appear on the Transition List or Addendum (#8)
- # Status of Sites Reported to DEP Prior to August 2, 1993 Which Do Not Appear on the Transition List or Addendum (#9)

THE NEW MCP: TRANSITION FACT SHEET #2

REQUIREMENTS FOR: LOCATIONS TO BE INVESTIGATED UNCLASSIFIED CONFIRMED SITES

In the new Waste Site Cleanup Program, only releases exceeding specific reporting thresholds will need to be reported to DEP and follow the Massachusetts Contingency Plan's rules for assessment and cleanup. "Locations to be Investigated" (or "LTBIs") and sites of confirmed releases that were already reported to DEP but which were not classified as "priority" or "non-priority" under the 1988 MCP will need to be reviewed with respect to the new reporting thresholds to determine whether there has been a reportable release and whether additional assessment and cleanup is needed.

The revised MCP contains specific transition requirements and deadlines that must be met by those legally responsible for LTBIs and unclassified disposal sites that are listed in these categories in DEP's August 1993 Transition List of Confirmed Disposal Sites and Locations to be Investigated, or the April 1994 or April 1995 Addenda. Requirements for LTBIs are in 310 CMR 40.0610; those for unclassified sites are in 310 CMR 40.0620. This Fact Sheet summarizes these transition requirements and deadlines.

OPTIONS: The revised MCP provides three options for handling LTBIs and unclassified confirmed disposal sites:

- o **Option 1: Use an LSP and the new regulations to determine the status of the site or location.**
- o **Option 2: Rely on a previously submitted Preliminary Assessment Form and/or Phase I report.**
- o **Option 3: Apply for a waiver of DEP approvals (as allowed by the 1988 MCP) by September 30, 1993 [please note: this option is no longer available].**

Each option is described below and summarized in Table 1.

Option 1: The new reporting thresholds and risk characterization procedures can be used to determine whether there is a reportable release and a condition of "No Significant Risk" as defined by the new MCP. An LSP will need to prepare an LSP Evaluation Opinion (which would be submitted to DEP) indicating the LTBI's or unclassified site's status in the new program. If additional response actions are needed, they would be conducted according to the new MCP.

An LSP Evaluation Opinion must reach one of the following conclusions:

- o the location is not a disposal site where a release occurred which must be reported to DEP according to the new MCP;
- o a reportable release has occurred or a threat of release existed, but response actions have met the requirements in the new MCP for a Response Action Outcome, and no further response actions are needed;

- o a reportable release or threat of release has occurred that requires further response actions.
- o a reportable release or threat of release has occurred which is regulated by another DEP program or another government agency (e.g., DEP's Solid Waste or Hazardous Waste Management Programs, or the federal Superfund program), and response actions are adequately regulated by that program as defined by the new MCP.

While this assessment is being conducted, field investigations can be performed. Where additional response actions are needed, any sudden releases, imminent hazards, and other time-critical site conditions must be addressed according to the new MCP (with "Immediate Response Actions" or "IRAs") if necessary. Voluntary response actions to clean up localized releases or to temporarily control releases ("Release Abatement Measures", or "RAMs") only may be conducted after an LSP Evaluation Opinion for the site is submitted to DEP. If a Response Action Outcome is not reached by the applicable deadline listed below for submittal of the LSP Evaluation Opinion, then a Tier Classification (and a Tier I permit application if needed) must be submitted to DEP by the deadline.

DEP may audit LSP Evaluation Opinions submitted for these sites, as well as any previously submitted documents. Certain actions, submittals, and interim deadlines may be specified as a result of such an audit. In addition, DEP may in some cases set earlier deadlines than those described below.

Option 2: If a Preliminary Assessment Form and/or Phase I report for an unclassified site or an LTBI was submitted to DEP before October 1, 1993, and this report specifically stated either that the location is not a disposal site or that it is a disposal site for which no further response actions are needed, this report may be used instead of an LSP Evaluation Opinion. This option requires that the person conducting the response action submit a statement to DEP affirming its conclusions. An LSP is not required for this assessment.

DEP must review and approve the statement and the underlying Preliminary Assessment Form and/or Phase I report before the site or location is deleted from the List. DEP will review these statements as staff is available, or as part of a targeted site discovery effort, and has not established specific timeframes for these reviews. If more certainty about a site's status is needed before DEP can review the statement, Option 1 with an LSP Evaluation Opinion (which does not need to be approved by DEP) should be used.

As with Option 1, if an Immediate Response Action is needed to address sudden releases, imminent hazards, and other time-critical release or site conditions, then DEP must be notified and an Immediate Response Action conducted in accordance with the new MCP. No Release Abatement Measures or other remedial actions may be conducted.

DEADLINES FOR OPTIONS 1 AND 2:

Deadlines for submittal of an LSP Evaluation Opinion or a consultant's statement to DEP are based on the date on which the site or location was first listed in the applicable category on DEP's List of Confirmed Disposal Sites and Locations to be Investigated (either as an LTBI or an unclassified disposal site):

DATE FIRST LISTED IN CATEGORY	DEADLINE FOR SUBMITTAL TO DEP
Between 1/15/87 and 1/15/89	8/2/95
Between 4/15/89 and 1/15/91	8/2/96
Between 4/15/91 and 10/1/93	8/2/97

OPTION 3 / Apply for a Waiver of DEP Approvals: The person conducting response actions at a LTBI or unclassified site could have applied for a waiver of DEP approvals (as allowed by the 1988 MCP) by September 30, 1993. DEP is reviewing all waiver applications submitted by this deadline, and will make determinations on all applications by May 1994. If a waiver is approved by DEP, then the transition requirements for sites with approved waivers must be followed (See Transition Fact Sheet #3).

FAILURE TO MEET DEADLINES/FEEs: If the deadlines outlined above for assessing LTBI or unclassified sites and reporting on their status to DEP are not met, the LTBI or unclassified site will be categorically classified as a Tier IB site and DEP will assess the Annual Compliance Fee for Tier IB sites (\$2,600).

SITES LISTED AS "UNCLASSIFIED" FOR WHICH A PROPOSED CLASSIFICATION AS "NON-PRIORITY" WAS SUBMITTED TO DEP BEFORE OCTOBER 1, 1993: The requirements for non-priority sites without approved waivers must be followed (See Transition Fact Sheet #4).

FOR MORE INFORMATION: Call the MCP Hotline, part of DEP's InfoLine: from area code 617 and from outside Massachusetts, call 617/338-2255. From area codes 413 and 508, call 1-800/462-0444.

Prepared by DEP/BWSC, 2/15/94

TABLE 1

**TRANSITION REQUIREMENTS FOR LOCATIONS TO BE INVESTIGATED
AND UNCLASSIFIED CONFIRMED DISPOSAL SITES**

OPTIONS	DEADLINES	REQUIRED SUBMITTALS	NEXT STEPS	RESPONSE ACTION LIMITATIONS AFTER OCTOBER 1, 1993
1. Use an LSP and the new regulations to determine the status of the site or location	Date First Listed in Submittal Current Date Category	ONE OF FOLLOWING LSP OPINIONS:		Immediate Response Actions must be conducted according to the MCP if necessary; Release Abatement Measures only may be conducted after an LSP opinion is submitted to DEP
	1/15/87 - 1/15/89 8/2/95	? no release or threat of action requiring notification has occurred	No further response required	
	4/15/89 - 1/15/91 8/2/96	? a release has occurred but previous response actions have met the requirements of a Response Action Outcome	No further response needed unless a solution has not been reached	
	4/15/91 - 10/1/93 8/2/97	? a release has occurred that requires further response actions. If a RAO cannot be achieved by the applicable deadline, a Tier Classification (with permit application if a Tier I site) must be submitted by the deadline	Proceed with response actions in accordance with MCP	
		? the LTBI or site is adequately regulated by DEP or another government program	Proceed with response actions under DEP or appropriate government program oversight	
2. Rely on a previously submitted Preliminary Assessment Form and/or Phase I report if it concluded the location or site is not a disposal site or that no further action is required	Date First Listed in Submittal Current Date Category 1/15/87 - 1/15/89 8/2/95 4/15/89 - 1/15/91 8/2/96 4/15/91 - 10/1/93 8/2/97	A statement affirming actions the report's conclusions	No further response required; however, the report conclusions do not become effective until approved by DEP	No response actions should be necessary. Immediate Response Actions must be conducted according to the MCP if necessary; Release Abatement Measures (RAMs) may not be conducted
3. Apply for a Waiver of DEP approvals (as allowed under the 1988 MCP) [please note: this option is no longer available]	Waiver application must be postmarked by midnight or hand delivered to DEP before the close of business on 9/30/93	A Waiver application package including a Waiver Application Form, Preliminary Assessment and/or Phase I Report, Site and the Classification Form indicating non-priority classification, and an application fee of \$1,200	If approved, proceed with response actions in accordance with the terms of the waiver and MCP Transition	Immediate Response Actions must be conducted according to the MCP if necessary; Interim Measures or RAMS may be conducted only after waiver is granted

THE NEW MCP: TRANSITION FACT SHEET #3

REQUIREMENTS FOR NONPRIORITY SITES WITH APPROVED WAIVERS

The 1988 Massachusetts Contingency Plan required that those assessing and cleaning up disposal sites obtain DEP's approval at six specific points in the response action process. Those conducting response actions at sites classified as "non-priority" under the 1988 MCP could obtain a waiver of five of these approvals once the site was classified and a waiver application submitted to DEP. While specific approval of each phase was not required, DEP reserved the right to audit response actions at sites with waivers to ensure that the work complies with the MCP.

In general, the transition requirements in the new MCP for non-priority sites with approved waivers allow response actions to continue under the terms of the waiver until a Completion Statement is submitted to DEP or the waiver expires. However, the new MCP establishes some separate requirements for different types of sites with waivers which depend on their status of work and the date the waiver application was submitted to DEP.

There are three types of non-priority sites with approved waivers:

- o sites for which a waiver completion statement in accordance with the 1988 MCP was submitted to DEP before October 1, 1993;
- o sites with approved waivers for which applications were submitted to DEP by July 30, 1993, and
- o sites with approved waivers for which applications were submitted to DEP between August 2, 1993 and September 30, 1993.

The revised MCP contains specific requirements and deadlines that must be met by those legally responsible for non-priority sites with approved waivers. These sites are listed as such in the August 1993 Transition List of Confirmed Disposal Sites and Locations to be Investigated or the April 1994 Addendum (see 310 CMR 40.0636). This fact sheet summarizes these requirements. If a waiver application is still being reviewed by DEP when the April Addendum is published, the final disposition of the application will be shown in a final Addendum DEP will publish later in 1994.

Sites For Which a Completion Statement Was Submitted to DEP Before October 1, 1993: As required by the 1988 MCP, a Completion Statement must state that response actions were conducted in accordance with the 1988 MCP, and provide an opinion about whether a permanent solution has been achieved. Therefore, sites for which a Completion Statement was submitted do not need additional response actions. However, DEP may audit the work upon which the Completion Statement is based at any time in the future. Any new releases of oil or hazardous material should be reported to DEP in accordance with the new MCP (310 CMR 40.0300).

Sites with Approved Waivers For Which Applications Were Submitted to DEP before August 2, 1993: Response actions must be completed in accordance with the waiver requirements in the 1988 MCP (310 CMR 40.537), and should be completed within the time period allowed by the waiver (generally five years from the date of its approval).

New Requirements: The revised MCP adds some requirements for sites with waivers which did not submit Completion Statements by October 1, 1993:

- o when a Completion Statement is submitted, it must indicate whether a Permanent Solution (as defined in the revised MCP, 310 CMR 40.1000) has been achieved in the opinion of the waiver recipient's consultant (an LSP is not required but may be used for this opinion).
- o the public involvement requirements of the revised MCP (Subpart N, 310 CMR 40.1400) must be followed.
- o if response actions are not complete when the waiver expires, the requirements in the revised MCP for Tier II sites must be followed.
- o If information is obtained that indicates that the site would be reclassified as a priority site in accordance with the 1988 MCP, DEP must be notified and a Tier Classification must be submitted in accordance with 310 CMR 40.0500 of the revised MCP.
- o DEP must be notified of any Imminent Hazard or release or threat of release of oil or hazardous material at a waiver site in accordance with 310 CMR 40.0300 of the revised MCP.

In addition, the person conducting response actions at a site with an approved waiver may choose to use some elements of the new MCP:

- o an LSP may be employed to provide Opinions about whether response actions meet the new MCP requirements, and may submit a Response Action Outcome Statement in place of a waiver completion statement.
- o the methods and standards for characterizing risks at the site may be used (including Method 1 Cleanup Standards) as the basis for identifying the need for remedial actions.

One provision of the revised MCP is not allowed to be used at waiver sites where response actions are conducted in accordance with the 1988 MCP: a site for which a waiver completion statement is submitted may not use an Activity and Use Limitation to reach a level of No Significant Risk. However, an LSP can be employed to provide a Response Action Outcome Statement (in accordance with the revised MCP, 310 CMR 40.1000), which can include an Activity and Use Limitation.

Tier Classification/Fees: All waiver sites are categorically classified as Tier II, even if a site

meets the criteria for categorical inclusion in Tier I. Sites for which the waiver application was submitted to DEP before August 2, 1993 will not be subject to Annual Compliance Fees for Tier II sites, as long as the waiver remains in effect.

Sites for which Waiver Applications Were Submitted to DEP Between August 2, 1993 and September 30, 1993: DEP is reviewing all applications submitted by September 30, 1993, and will make determinations on all applications by May 1994. All of the New Requirements outlined above must be met by sites for which waivers were applied for between August 2 and September 30, 1993.

Tier Classification/Fees: These sites are categorically classified as Tier II, and will be subject to an Annual Compliance Fee of \$1,300/year for a Tier II site (beginning one year after the date of the waiver's approval by DEP).

IF RESPONSE ACTIONS ARE NOT COMPLETED WHEN THE WAIVER EXPIRES: DEP will not extend waivers beyond their expiration date. Once a waiver expires, any additional response actions that are needed to achieve a level of No Significant Risk must follow the revised MCP's requirements and deadlines for Tier II sites (310 CMR 40.0560). In addition, the waiver recipient must submit a Status Report to DEP which includes a plan for completing response actions.

TRANSFERRING WAIVERS: A waiver may not be transferred or reassigned. If a person who is not the waiver recipient wants to take over work, all subsequent response actions must follow the new MCP's requirements for Tier II sites (including paying Annual Compliance Fees). In addition, the person who wants to continue the response actions must submit a Status Report and a plan for conducting the additional response actions to DEP, in accordance with 310 CMR 40.0560(7).

RECLASSIFICATION BY DEP: If the transition requirements are not met for response actions needed after a waiver expires, or interim deadlines in the approved waiver are not met, then DEP will assess a Tier IC Annual Compliance Fee (\$1,950/yr). If DEP obtains information that supports classification of a waiver site as Tier I, then DEP will classify the site appropriately, and assess the Annual Compliance Fee that applies to the category to which the site is assigned.

FOR MORE INFORMATION: call the MCP Hotline, part of DEP's InfoLine: from area code 617 and outside of Massachusetts, call 617/338-2255. From area codes 413 and 508, call 1-800/462-0444.

Prepared by DEP/BWSC, 2/15/94

THE NEW MCP: TRANSITION FACT SHEET #4

REQUIREMENTS FOR NON-PRIORITY DISPOSAL SITES WITHOUT WAIVERS OF DEP APPROVALS

The 1988 Massachusetts Contingency Plan required that sites with confirmed releases of oil and/or hazardous material be classified as "priority" or "non-priority", based on specific criteria that reflect the degree of risk the site presents for health, safety, public welfare, and the environment. Those assessing and cleaning up both priority and non-priority disposal sites had to obtain DEP's approval at six specific points in the response action process.

The 1988 MCP allowed those conducting response actions at non-priority sites to obtain a waiver of five of these approvals once the site was classified and a waiver application submitted to DEP. While specific approval of each phase was not required, DEP reserved the right to audit response actions at sites with waivers to ensure that the work complies with the MCP.

The revised MCP contains specific requirements and deadlines that must be met by those legally responsible for "non-priority" sites. These sites are listed as such in the August 1993 Transition List of Confirmed Disposal Sites and Locations to be Investigated or the April 1994 Addendum (see 310 CMR 40.0636). This fact sheet summarizes these requirements.

OPTIONS: The revised MCP requires that sites listed as non-priority be assessed to determine whether there has been a release of oil or hazardous material that is reportable under the revised MCP, and if so, whether additional response actions are needed. The revised MCP provides three options for non-priority disposal sites:

- o **Option 1: Use an LSP and the new regulations to determine the status of the site or location.**
- o **Option 2: Rely on a previously submitted Preliminary Assessment Form and/or Phase I report.**
- o **Option 3: Apply for a waiver of DEP approvals (as allowed by the 1988 MCP) by September 30, 1993 [please note: this option is no longer available].**

Option 1: The new reporting thresholds and risk characterization procedures can be used to determine whether there is a reportable release and a condition of "No Significant Risk" as defined by the new MCP. An LSP will need to prepare an LSP Evaluation Opinion (which would be submitted to DEP) indicating the non-priority site's status in the new program. If additional response actions are needed, they would be conducted according to the new MCP.

An LSP Evaluation Opinion must reach one of the following conclusions:

- o the location is not a disposal site where a release occurred which must be reported to DEP according to the new MCP;

- o a reportable release has occurred or a threat of release existed, but response actions have met the requirements in the new MCP for a Response Action Outcome, and no further response actions are needed;
- o a reportable release or threat of release has occurred that requires further response actions.
- o a reportable release or threat of release has occurred which is regulated by another DEP program or another government agency (e.g., DEP's Solid Waste or Hazardous Waste Management Programs, or the federal Superfund program), and response actions are adequately regulated by that program as defined by the new MCP.

While this assessment is being conducted, field investigations can be performed. Where additional response actions are needed, any sudden releases, imminent hazards, and other time-critical site conditions must be addressed according to the new MCP (with "Immediate Response Actions" or "IRAs") if necessary. Voluntary response actions to clean up localized releases or to temporarily control releases ("Release Abatement Measures", or "RAMs") only may be conducted after an LSP Evaluation Opinion for the site is submitted to DEP. If a Response Action Outcome is not reached by the applicable deadline listed below for submittal of the LSP Evaluation Opinion, then a Tier Classification (and a Tier I permit application if needed) must be submitted to DEP by the deadline.

DEP may audit LSP Evaluation Opinions submitted for these sites, as well as any previously submitted documents. Certain actions, submittals, and interim deadlines may be specified as a result of such an audit. In addition, DEP may in some cases set earlier deadlines than those described below.

Option 2: If a Phase I report for a non-priority site was submitted to DEP before October 1, 1993, and this report specifically stated either that the location is not a disposal site or that it is a disposal site for which no further response actions are needed, this report may be used instead of an LSP Evaluation Opinion. This option requires that the person conducting the response action submit a statement to DEP affirming its conclusions. An LSP is not required for this assessment.

DEP must review and approve a statement before the site is deleted from the List. DEP will review these statements as staff is available, or as part of a targeted site discovery effort, and has not established specific timeframes for these reviews. If more certainty about a site's status is needed before DEP can review a statement, Option 1 with an LSP Evaluation Opinion (which does not need to be approved by DEP) should be used.

As with Option 1, if an Immediate Response Action is needed to address sudden releases, imminent hazards, and other time-critical release or site conditions, then DEP must be notified and an Immediate Response Action conducted in accordance with the new MCP. No Release Abatement Measures or other remedial actions may be conducted.

DEADLINES FOR OPTIONS 1 AND 2:

Deadlines for submittal of an LSP Evaluation Opinion or a consultant's statement to DEP are based on the date on which the non-priority site was first listed as such on DEP's List of Confirmed Disposal Sites and Locations to be Investigated or Addendum:

DATE FIRST LISTED IN CATEGORY	DEADLINE FOR SUBMITTAL TO DEP
Between 1/15/87 and 1/15/89	8/2/95
Between 4/15/89 and 1/15/91	8/2/96
Between 4/15/91 and 10/1/93	8/2/97

OPTION 3 / Apply for a Waiver of DEP Approvals: The person conducting response actions at a non-priority site could have applied for a waiver of DEP approvals (as allowed by the 1988 MCP) by September 30, 1993. DEP is reviewing all waiver applications submitted by this deadline, and will make determinations on all applications by May 1994. If a waiver is approved by DEP, then the transition requirements for sites with approved waivers must be followed (See Transition Fact Sheet #3).

FAILURE TO MEET DEADLINES/FEE: If the deadlines outlined above for assessing non-priority sites and reporting on their status to DEP are not met, DEP will assess the Annual Compliance Fee for Tier IC sites (\$1,950).

RECLASSIFICATION: If information is obtained that indicates a non-priority site would be classified as a "Tier I" site under the new MCP, then a Tier I permit application must be submitted to DEP within 90 days of obtaining this information (unless a Response Action Outcome has been reached). If DEP obtains information that supports classification of a non-priority site as Tier I, then DEP will classify the site appropriately, and assess the Annual Compliance Fee that applies to the category to which the site is assigned.

APPROVED SHORT TERM MEASURES AND INTERIM MEASURES: Any Short Term Measures or Interim Measures that received DEP approval and were on-going as of October 1, 1993 should be continued in accordance with the terms of the approval unless DEP states otherwise. An LSP may be employed (but is not required). If an LSP is employed, he or she must be identified to DEP. Once the approved Short Term Measure or Interim Measure is complete, all future response actions must be conducted according to the terms of the revised MCP.

FOR MORE INFORMATION: call the MCP Hotline, part of DEP's InfoLine: from area code 617 and outside of Massachusetts, call 617/338-2255. From area codes 413 and 508, call 1-800/462-0444.

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THE NEW MCP: TRANSITION FACT SHEET #5

REQUIREMENTS FOR PRIORITY DISPOSAL SITES

The 1988 Massachusetts Contingency Plan required that sites with confirmed releases of oil and/or hazardous materials be classified as "priority" or "non-priority", based on specific criteria that reflect the degree of risk the site presents for health, safety, public welfare, and the environment. Those assessing and cleaning up priority disposal sites had to obtain DEP's approval at six specific points in the response action process.

The revised MCP contains specific requirements and deadlines for those legally responsible for assessing and cleaning up sites listed as "priority disposal sites" in the August 1993 Transition List of Confirmed Disposal Sites and Locations to be Investigated or the April 1994 Addendum (see 310 CMR 40.0640 and 40.0670). This Fact Sheet summarizes these requirements.

As of October 1, 1993, all priority disposal sites were categorically classified as Tier IA [40.0640(1)(b)]. DEP will review the status of all of these sites, and may reclassify some as Tier IB (based on criteria in 40.0730). DEP will then send to the person conducting response actions (or other legally responsible party) a "Transition Statement" which describes the classification of the site and the terms of a permit.

The Responsible Party, Potentially Responsible Party, or Other Person conducting response actions must decide whether to sign the Transition Statement and return it to DEP within 120 days of receiving it [40.0640(3)(b)]. The regulations provide three options:

- o **Option 1:** accept the terms of the Transition Statement,
- o **Option 2:** disagree with DEP's classification of the site as Tier IA or IB, or
- o **Option 3:** refuse to accept the terms of the Transition Statement.

Each option is described below.

Option 1: If the terms of the Transition Statement are accepted, the person signing the Statement must agree to conduct all response actions in accordance with conditions established by DEP approvals that were in effect on October 1, 1993, and all subsequent response actions in accordance with the site's Tier IA or IB permit and the provisions of the revised MCP. In addition:

- o Neither a permit application nor a permit fee will be required. Annual compliance fees for the appropriate site category will be assessed, starting October 1, 1993.
- o An LSP will not be required for work that has already been approved by DEP before October 1, 1993. However, if an LSP is not employed, the consultant must provide a statement that the response actions comply with the applicable requirements of the 1988 MCP and any conditions of DEP's approval.

- o The person conducting the response action may choose to employ an LSP for any response actions that were approved by DEP before October 1, 1993 (and should identify the LSP in the Transition Statement returned to DEP).
- o An LSP must be used to oversee any additional response actions that must be conducted after October 1, 1993 which are not subject to a DEP approval issued prior to October 1.
- o The person conducting the response action may use the methods and standards for risk characterization in the revised MCP for work which DEP approved prior to October 1. All response actions not subject to a pre-October 1 DEP approval must be conducted in accordance with the revised MCP.

Option 2: If the Responsible Party, Potentially Responsible Party, or Other Person conducting response actions disagrees with DEP's classification of a site as Tier IA or IB (and therefore does not accept the Transition Statement), then the Transition Statement must be returned to DEP with an application for a Major Permit Modification (see 310 CMR 40.0707 for requirements, and 310 CMR 4.00 for the appropriate fee).

Option 3: If the Responsible Party, Potentially Responsible Party, or Other Person conducting response actions does not accept the Transition Statement because they are technically, legally, or financially unable to conduct the needed response actions, or for other reasons, the Transition Statement must be returned to DEP with:

- o an indication of whether response actions approved by DEP before October 1, 1993 will be conducted. If they will not, the Transition Statement must include an explanation of the issues that prevent the work from proceeding. If approved response actions will be conducted, the Transition Statement should include a schedule for completing them.
- o a status report that includes an LSP Opinion as to whether a temporary and/or permanent solution has been achieved at the site, and what response actions (if any) remain to be completed to reach a temporary or permanent solution.

If a Transition Statement is not returned to DEP within 120 days of its receipt, or if the Statement indicates that the person conducting response actions does not accept the Transition Statement, the Annual Compliance Fee for Tier IB sites (\$2,600) will be assessed, starting the day after the Transition Statement is due to DEP. No response actions that have not been previously approved by DEP can be conducted at a priority disposal site unless a Tier I permit is obtained (in accordance with the transition requirements or the permit provisions of the revised MCP).

APPROVED WORK CAN PROCEED: Response actions that have received DEP's approval (including phase work, short term measures, and interim measures) and are on-going after October 1, 1993 should be continued in accordance with the terms of the approval unless DEP states otherwise. An LSP may be employed (but is not required). If an LSP is employed, he or she must be identified to DEP. Once the approved work is complete, all future response actions must be conducted according to the terms of the revised MCP.

Response Actions at Priority Disposal Sites with DEP Approvals Pending as of October 1, 1993 will be reviewed by DEP. DEP may approve these actions in the Transition Statement for a site, in which case the approval would become effective once the Transition Statement is signed and returned to DEP. DEP may also approve pending response actions in a separate letter if DEP performs its review prior to issuing a Transition Statement. In this case, the actual costs for DEP staff time spent on the specific site (a Tier IA Annual Compliance Fee) will be assessed. The person conducting response actions must employ an LSP and use the requirements of the revised MCP for these response actions.

FOR MORE INFORMATION: call the MCP Hotline, part of DEP's InfoLine: from area code 617 and outside of Massachusetts, call 617/338-2255. From area codes 413 and 508, call 1-800/462-0444.

Prepared by DEP/BWSC, 2/15/94

THE NEW MCP: TRANSITION FACT SHEET #6

REQUIREMENTS FOR SITES WITH CONSENT ORDERS AND CONSENT DECREES

The revised Massachusetts Contingency Plan establishes specific requirements for disposal sites for which an administrative consent order, judicial consent decree, or DEP Memorandum of Understanding is in effect (see 310 CMR 40.0670). This Fact Sheet summarizes these requirements.

The revised MCP provides that any administrative consent order, judicial consent decree, and DEP memorandum of understanding will remain in effect until its terms are fulfilled, or it is specifically revised or rescinded.

Tier Classification/Fees: All sites for which one of these agreements is in effect will be categorically classified as a Tier IA site. Tier IA Annual Compliance Fees will be assessed (actual charges are based on DEP staff time spent on the specific site) unless there are specific provisions in the agreement with respect to oversight charges.

Compliance: DEP will review response actions at all sites where one of these agreements is in effect, and will evaluate their compliance with the agreement. Where response actions comply with the terms of the agreement, the agreement will remain in effect until it is modified by an order or decree. A Tier I permit will not be required to conduct work approved pursuant to an agreement. Parties to an agreement can request that the agreement be amended so that response actions can be conducted according to the terms of the revised MCP.

If DEP finds that the response actions do not comply, enforcement action may include:

- o enforcing the terms of the agreement;
- o requiring submittal of a Tier Classification and Permit Application, and incorporating the agreement into a Tier I permit; or
- o requiring submittal of a Tier Classification and Permit Application, and withdrawing the agreement.

FOR MORE INFORMATION: Call the MCP Hotline, part of DEP's InfoLine: from area code 617 and from outside Massachusetts, call 617/338-2255. From area codes 413 and 508, call 1-800/462-0444.

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THE NEW MCP: TRANSITION FACT SHEET #7

REQUIREMENTS FOR: REMEDIAL SITES DELETED SITES

The 1988 Massachusetts Contingency Plan required that DEP list "Remedial" sites for which remedial actions have been completed, as well as sites where either no release occurred or no further action is needed ("Deleted"). The revised MCP describes the transition status and requirements for sites listed in these categories on the August 1993 Transition List of Confirmed Disposal Sites and Locations to be Investigated and the April 1994 Addendum (see 310 CMR 40.0650 and 310 CMR 40.0660). This Fact Sheet summarizes the requirements for these sites.

REMEDIAL sites are sites where, prior to October 1, 1993, remedial response actions were completed at a disposal site and DEP determined that no further actions were required at that time to protect health, safety, public welfare, and the environment.

There are three types of Remedial sites identified on the Transition List or Addendum: those with permanent solutions, those with temporary solutions, and those designated as "other". Remedial sites with permanent or temporary solutions are considered to have achieved a Response Action Outcome (RAO) Statement in accordance with the revised MCP (Subpart J, 310 CMR 40.1000). If a Remedial site has a permanent solution (Class A RAO), no further response actions are required. If a Remedial site has a temporary solution (Class C RAO), a plan must be developed for achieving a permanent solution, and the temporary solution must be maintained until a permanent solution is achieved.

"Other" remedial sites are sites where remedial actions were completed before the original MCP was promulgated in 1988. For these sites, no further response actions are required unless new information indicates that a site condition requires notification to DEP in accordance with the revised MCP (see Subpart C, 310 CMR 40.0300), or that the remedial actions taken are no longer effective in protecting health, safety, public welfare and the environment. In these cases, DEP must be notified and response actions conducted according to the revised MCP. Those legally responsible may choose to re-evaluate a remedial site to determine its status under the revised MCP.

DELETED sites are locations where, prior to October 1, 1993, assessments concluded that no further response actions are required to protect health, safety, public welfare or the environment. These sites differ from remedial sites in that comprehensive cleanup plans were not required at these sites (i.e., Phases 3 and 4 in the 1988 MCP). For some of these sites, an assessment found that no release of oil or hazardous material had occurred at that location. In other cases, an assessment found that a release had occurred, but that no further response actions were necessary (often because preliminary response actions had taken care of the problem).

According to the revised MCP, no further response actions are required for either type of Deleted site unless conditions change and oil or hazardous material constitute a release which requires notification to DEP in accordance with the revised MCP (see Subpart C, 310 CMR 40.0300). If this occurs, DEP must be notified and response actions conducted according to the revised MCP.

FOR MORE INFORMATION: Call the MCP Hotline, part of DEP's InfoLine: from area code 617 and from outside Massachusetts, call 617/338-2255. From area codes 413 and 508, call 1-800/462-0444.

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THE NEW MCP: TRANSITION FACT SHEET #8

REQUIREMENTS FOR RELEASES REPORTED TO DEP BETWEEN AUGUST 2, 1993 AND SEPTEMBER 30, 1993 WHICH DO NOT APPEAR ON THE TRANSITION LIST OR ADDENDUM

The revised Massachusetts Contingency Plan (310 CMR 40.0641 and 40.0642) contains specific opportunities and obligations for releases reported to DEP on or after August 2, 1993 and before October 1, 1993 which do not appear on the August 1993 Transition List of Confirmed Disposal Sites and Locations to be Investigated or the April 1994 Addendum:

NO FURTHER ACTION RECOMMENDATIONS

- o A "no further action" recommendation which was developed in accordance with the 1988 MCP [310 CMR 40.541(4) or 40.543(3)] and which was submitted to DEP on or before September 30, 1993 must be reviewed and approved by DEP before it can take effect. DEP will review these recommendations as staff is available, or as part of a site discovery effort, and has not established specific timeframes for these reviews.
- o If more certainty about a "no further action" recommendation submitted to DEP is needed before DEP can review this recommendation, an LSP may be engaged to provide an Evaluation Opinion using the criteria in Subpart J of the revised MCP (310 CMR 40.1000) in support of the "no further action" recommendation. These LSP Evaluation Opinions may be audited by DEP, but need not obtain DEP approval. LSP Evaluation Opinion options are listed in 40.0610(2) for "Locations to be Investigated". Even though a site does not appear on the Transition List or Addendum, one of the listed options should be selected for the LSP Evaluation Opinion.

RESPONSE ACTIONS CONTINUING PAST OCTOBER 1ST

- o Response actions that have been approved by DEP but were not completed by October 1, 1993 must be continued in accordance with the terms of the approval, unless otherwise specified by DEP. An LSP may be employed to coordinate these response actions after October 1, 1993 and to submit a Response Action Outcome in accordance with 40.1000. If an LSP is engaged, the Department must be notified of the LSP's name and license number.
- o Any response actions that are conducted after October 1, 1993 which were not already approved by DEP prior to October 1 must be conducted in accordance with the requirements of the revised MCP, including the requirement to employ an LSP to oversee response actions. October 1, 1993 will be the start date for any applicable time frames, including classifying a disposal site as Tier I or Tier II, reaching a Response Action Outcome, and assessing annual compliance assurance fees.

FOR MORE INFORMATION: Call the MCP Hotline, part of DEP's InfoLine: from area code 617 and from outside Massachusetts, call 617/338-2255. From area codes 413 and 508, call 1-800/462-0444.

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THE NEW MCP: TRANSITION FACT SHEET #9

STATUS OF SITES REPORTED TO DEP PRIOR TO AUGUST 2, 1993 WHICH DO NOT APPEAR ON THE TRANSITION LIST OR ADDENDUM

Subpart F of the Massachusetts Contingency Plan (310 CMR 40.0600) establishes requirements for sites which appear on DEP's Transition List of Confirmed Disposal Sites and Locations to be Investigated, and releases reported to DEP between August 2, 1993 and September 30, 1993 which do not appear on the List. Other Subparts of the Massachusetts Contingency Plan (MCP) establish requirements and deadlines for responding to releases which are reported to DEP on or after October 1, 1993.

Sites which were reported to DEP before August 2, 1993 and which do not appear on the List are not specifically required by the MCP to perform any further response actions. These sites include spills of oil and hazardous material that may not have been cleaned up permanently, and "locations to be investigated" for which DEP lacked sufficient information to decide whether to list or not. However, where DEP believes that these sites may pose a significant risk of harm to health, safety, public welfare, or the environment, DEP may require that response actions be conducted at these sites. This fact sheet describes DEP's process for reviewing these "backlogged" sites and notifying those legally responsible where further response actions will be required.

REVIEW PROCESS: DEP is reviewing the information it has on most sites reported to DEP before August 2, 1993, to determine whether further response actions should be required. Where this review indicates that further actions are necessary, DEP will send the person(s) legally responsible for the site a Notice of Responsibility establishing an Interim Deadline for conducting these response actions.

The Interim Deadline will generally require that either a Response Action Outcome (RAO) Statement or a Tier Classification (and permit application if applicable) be submitted to DEP within one year from receipt of the Notice of Responsibility. If a site cannot reach a RAO within one year and is subsequently classified as Tier I or Tier II, the deadlines in the MCP for reaching a RAO and other intermediate milestones then would apply (see 310 CMR 40.0550 and 40.0560).

SCHEDULE: If DEP decides to send a Notice of Responsibility (NOR) for a site as a result of its review, all such NORs will reach potentially responsible parties by the following dates:

DEP Region in Which Site is Located	Date By Which NOR will be Received
Western Region	March 1, 1994
Central Region	March 1, 1994
Northeast Region	May 1, 1994
Southeast Region	March 1, 1994

IF NO NOTICE SETTING INTERIM DEADLINE IS RECEIVED: DEP will not review information it has on all "backlogged" sites. In cases where DEP does not review site information, the agency will not require further response actions to be performed. **If a responsible party does not receive a Notice of Responsibility by the applicable date listed above, DEP will not pursue further response actions at the site, and there is no burden for the responsible party to perform additional work.**

However, if a release or threat of release exists which meets the criteria for "2-hour" or "72-hour" reporting described in 310 CMR 40.0300, or a condition of Substantial Release Migration exists at a site (see 310 CMR 40.0413), then DEP must be notified that additional response actions are needed, and all requirements and timeframes in the MCP for responding then would apply from the date of the notification.

If future environmental sampling indicates that oil or hazardous material is present above a Reportable Concentration (i.e., meets a "120-day" reporting criteria) and further response actions are necessary, then the responsible party should contact DEP to get a Release Tracking Number before proceeding with response actions. No remedial actions (including Limited Removal Actions described at 310 CMR 40.0318) may be taken prior to contacting DEP and obtaining any necessary approvals specified in the MCP.

DEP's decision to not require further response actions at some sites does not mean that the agency has determined that the site is "clean". At any site, DEP may determine that further response actions are needed if additional information about the site comes to DEP's attention (e.g., through a focused site discovery effort, a study of a neighboring site, or a complaint).

Where a responsible party wants more certainty about whether a site meets the standards for "clean enough" described in the new MCP (or if another party such as a bank seeks this information), site conditions can be assessed by a qualified expert.

FOR MORE INFORMATION: Call the MCP Hotline, part of DEP's InfoLine: from area code 617 and from outside Massachusetts, call 617/338-2255. From area codes 413 and 508, call 1-800/462-0444.

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